

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

RACHEL HOCHSTETLER, et al.,

Plaintiffs,

v.

PACIFIC GATEWAY CONCESSIONS
LLC,

Defendant.

Case No. 14-cv-04748-TEH

**ORDER GRANTING MOTIONS FOR
FINAL APPROVAL OF CLASS
ACTION SETTLEMENT, FOR
AWARD OF ATTORNEY'S FEES
AND COSTS, AND FOR INCENTIVE
PAYMENTS; JUDGMENT**

On October 5, 2015, Plaintiffs Rachel Hochstetler ("Hochstetler") and Cirena Torres ("Torres"), on behalf of themselves and all others similarly situated, filed a Motion for Preliminary Approval of Class Action Settlement. Dkt. No. 37. Attached as Exhibit 1 to the Motion for Preliminary Approval was the Parties' Stipulated Settlement Agreement and Release ("Settlement" or "Agreement").¹ Defendant Pacific Gateway Concessions LLC ("PGC") did not oppose the motion. Dkt. No. 42.

On November 9, 2015, the Court held a hearing to discuss whether the Settlement is fair, reasonable, and adequate, as required under Federal Rule of Civil Procedure ("Rule") 23(e)(2). At the hearing, the Court ordered the parties to submit, on or before January 11, 2016, supplemental briefing regarding the following aspects of their proposed Settlement: (1) the exclusion of Electronic Goods from the type of goods that may be purchased with the Gift Cards that comprise the \$800,000 Settlement Fund; (2) the limitation of one \$100 Gift Card per Settlement Class member; (3) Class Notice through only the posting of a Short-Form Notice at each cash register in each of the PGC Included Stores; and (4) the charities selected to receive any residual funds from the Settlement Fund. The parties timely submitted a supplemental response, supporting declaration, and notices addressing these four concerns. Dkt. Nos. 46-49.

¹ Capitalized terms in this Order shall have the same meaning as in the Agreement, unless indicated otherwise.

On February 2, 2016, the Court entered an Order granting preliminary approval of the Settlement, as partially modified by Dkt. Nos. 46-49. Dkt. No. 50. As part of the same Order, the Court approved a plan of notice to be directed to Settlement Class members and set deadlines by which Settlement Class members were to opt-out, object, or request to be heard at the final approval hearing. Dkt. No. 50, ¶¶ 10-17.

On May 6, 2016, Hochstetler and Torres, on behalf of themselves and on behalf of the Settlement Class, filed a Motion for Final Approval of Class Action Settlement. Dkt. No. 51. Also on May 6, 2016, Hochstetler, Torres, and Class Counsel filed a Motion for Award of Attorney's Fees and Costs to Class Counsel and Incentive Payments to the Class Representatives. Dkt. No. 54. On June 6, 2016, the Court conducted a fairness (final approval) hearing. Dkt. No. 56.

Having carefully considered all submissions and arguments presented, IT IS HEREBY ORDERED, ADJUDGED, and DECREED that:

1. The Court GRANTS final approval of the proposed Settlement upon the terms and conditions set forth in the Agreement (as partially modified by the Parties' supplemental agreement (Dkt. Nos. 46-49) and the Court's Order granting preliminary approval thereof (Dkt. No. 50)).

2. The Court finds that the terms of the proposed Settlement are fair, adequate, and reasonable and comply with Rule 23(e).

3. The Court orders that the following Settlement Class is certified for settlement purposes only:

All consumers who, at any time during the period October 24, 2012 to October 23, 2014, were provided an electronically printed receipt at the point-of-sale or transaction at any store operated by PGC or its affiliates listed on Exhibit A to the Agreement ("PGC Included Stores"), on which receipt was printed the expiration date of the consumer's credit card or debit card.

The PGC Included Stores expressly exclude the stores listed on Exhibit B to the Agreement ("PGC Excluded Stores"), as these stores used a different point-of-sale system.

1 4. The Court finds that, for settlement purposes only, the above-defined
2 Settlement Class meets all of the requirements for class certification. The Court further
3 finds that, for settlement purposes only, the requirements of Rule 23(a) and 23(b)(3) are
4 satisfied and that: (a) the Settlement Class is ascertainable; (b) the members of the
5 Settlement Class are so numerous that joinder is impracticable; (c) there are questions of
6 law and fact common to the Settlement Class that predominate over any individual
7 questions; (d) the Class Representatives' claims are typical of the claims of the Settlement
8 Class; (e) the Class Representatives and Class Counsel have fairly, adequately, reasonably
9 and competently represented and protected the interests of the Settlement Class throughout
10 the litigation; and (f) a class action is superior to other available methods for the fair and
11 efficient adjudication of the controversy.

12 5. The Court hereby APPOINTS plaintiffs Hochstetler and Torres as the Class
13 Representatives for the Settlement Class.

14 6. The Court hereby APPOINTS attorney Chant Yedalian of Chant & Company
15 A Professional Law Corporation as Class Counsel for the Settlement Class.

16 7. The Court finds that the Settlement is the product of serious, informed, non-
17 collusive negotiations conducted at arm's-length by the Parties and with the assistance of
18 the Court-appointed mediator David M. Bluhm, Esq. In making these findings, the Court
19 considered, among other factors, the potential statutory damages claimed in the lawsuit on
20 behalf of Plaintiffs and members of the Settlement Class, Defendant's potential liability,
21 the risks of continued litigation including trial outcome, delay and potential appeals, the
22 substantial benefits available to the Settlement Class as a result of the Settlement, and the
23 fact that the proposed Settlement represents a compromise of the Parties' respective
24 positions rather than the result of a finding of liability at trial. The Court further finds that
25 the terms of the Settlement have no obvious deficiencies and do not improperly grant
26 preferential treatment to any individual member of the Settlement Class.

27 8. The Court finds that the notice that has been provided to Settlement Class, as
28 well as the means by which it was provided, including the Short-Form Notice, Full Notice,

1 and Claim Form, attached as Exhibits D, E, and C, respectively, to the Agreement, all of
2 which the Court previously approved, constitutes the best notice practicable under the
3 circumstances and is in full compliance with the United States Constitution, the
4 requirements of due process, and Rule 23. The Court further finds that such notice fully
5 and accurately informed Settlement Class members of all material elements of the lawsuit
6 and proposed class action Settlement, of each member's right to be excluded from the
7 Settlement, and each member's right and opportunity to object to the Settlement and be
8 heard at the fairness (final approval) hearing.

9 9. The Court finds that the manner and content of the notice of Settlement was
10 in conformity with this Court's previous Orders.

11 10. The Court finds that zero Settlement Class members timely requested
12 exclusion from the Settlement.

13 11. The Court finds that zero Settlement Class members timely objected to the
14 Settlement.

15 12. The Court finds that zero Settlement Class members timely requested to
16 appear or be heard at the final approval hearing.

17 13. All Settlement Class members who did not timely exclude themselves from
18 the Settlement are bound by the Agreement, including the releases contained in paragraphs
19 16 and 17 of the Agreement.

20 14. The Court hereby directs the Parties to effectuate all terms of the Settlement
21 and the Agreement.

22 15. The Court finds that \$200,000 in fees and costs to Class Counsel is
23 reasonable under both the percentage of the total settlement approach and, alternatively,
24 based upon Class Counsel's lodestar. The Court finds that the \$550 hourly rate of Class
25 Counsel Chant Yedalian is reasonable based upon his qualifications, skills, and experience.

26 16. The Court hereby APPROVES Class Counsel's request for an award of
27 \$200,000 in reasonable attorney's fees and costs to Class Counsel Chant Yedalian of Chant
28 & Company A Professional Law Corporation. Defendant PGC shall make payment of this

award to Class Counsel pursuant to the terms of the Agreement.

17. The Court hereby APPROVES Plaintiffs' request for awards of \$5,000 each to the Class Representatives, Hochstetler and Torres, as an incentive (service) award to compensate them for their service as the representatives of the Settlement Class. Defendant PGC shall make payment of these awards to the Class Representatives pursuant to the terms of the Agreement.

18. If any residual funds from the Settlement Fund remain after payments are made to the Settlement Class members through the distribution of PGC Gift Cards, any and all such residual funds will be distributed to Consumers Union of the United States.

19. Each of the Parties is to bear its own fees and costs except as expressly provided in the Agreement or in this Order.

20. The Court hereby DISMISSES the Action WITH PREJUDICE in accordance with the terms of the Agreement; however, the Court shall retain continuing jurisdiction to interpret, implement, and enforce the Settlement, and all orders and judgment entered in connection therewith.

21. The Court directs the Clerk of the Court to enter this Order as a judgment (subject to the terms of paragraphs 19-20, above).

IT IS SO ORDERED.

Dated: 06/07/16



THELTON E. HENDERSON
United States District Judge